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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

) MM DOCKET NO. 95-154

CONTEMPORARY MEDIA, INC.

Licensee of Stations WBOW(AM), WBFX(AM), and
WZZQ(FM), Terre Haute, Indiana

Order to Show Cause Why the Licenses for Stations
WBOW(AM), WBFX(AM), and WZZQ(FM), Terre Haute,
Indiana, Should Not be Revoked

DOCKET FILE COPY ORIGINAL

CONTEMPORARY BROADCASTING, INC.

Licensee of Station KFMZ(FM), Columbia, Missouri, and
Permittee of Station KAAM-FM, Huntsville, Missouri (unbuilt)

Order to Show Cause Why the Authorizations for Stations
KFMZ(FM), Columbia, Missouri; and KAAM-FM, Huntsville,
Missouri, Should Not be Revoked

LAKE BROADCASTING, INC.

Licensee of Station KBMX(FM), Eldon, Missouri, and
Permittee of Station KFXE(FM), Cuba, Missouri

Order to Show Cause Why the Authorizations for Stations
KBMX(FM), Eldon, Missouri; and KFXE(FM), Cuba,
Missouri, Should Not be Revoked

LAKE BROADCASTING, INC.

) File No. BPH-921112MH

For a Construction Permit for a New FM Station on
Channel 244A at Bourbon, Missouri

To: Administrative Law Judge
Arthur I. Steinberg

MASS MEDIA BUREAU'S
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

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**MASS MEDIA BUREAU'S PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

Preliminary Statement

1. By Order to Show Cause and Notice of Apparent Liability, FCC 95-410, released October 10, 1995 ("Order to Show Cause"), the Commission designated the above-captioned licenses and applications of Contemporary Media, Inc., Contemporary Broadcasting, Inc., and Lake Broadcasting, Inc. (collectively, "Licensees"), for hearing on the following issues:

1. To determine the effect of Michael Rice's convictions on the basic qualifications of Contemporary Media, Inc., Contemporary Broadcasting, Inc., and Lake Broadcasting, Inc.
2. To determine whether Contemporary Media, Inc., Contemporary Broadcasting, Inc., and Lake Broadcasting, Inc., misrepresented to the Commission that, subsequent to his arrest, Michael Rice has been excluded from the management and operation of the Contemporary Media, Inc., Contemporary Broadcasting, Inc., and Lake Broadcasting, Inc., radio stations.
3. To determine pursuant to Section 310(d) of the Communications Act of 1934, as amended, and Section 73.3540 of the Commission's Rules, whether Michael Rice engaged in the unauthorized transfer of control of Contemporary Media, Inc., Contemporary Broadcasting, Inc., and Lake Broadcasting, Inc.
4. To determine, in light of the evidence adduced under the foregoing issues, whether Contemporary Media, Inc., Contemporary Broadcasting, Inc., and/or Lake Broadcasting, Inc., possess the requisite qualifications to be or remain Commission licensees of their respective stations.

2. Hearing sessions on the above issues were held on April 9, May 21 and May 22, 1996. The record was closed on May 22, 1996. Tr. 642.

PROPOSED FINDINGS OF FACT

Issue One

Preliminary Statement

Contemporary Media, Inc.

1. Contemporary Media, Inc. ("CMI"), is the licensee of Stations WBOW(AM), WZZQ(AM), and WZZQ(FM), Terre Haute, Indiana. Michael Stephen Rice ("Rice") is the President, Treasurer, a Director, and 100% shareholder of CMI. (MMB Ex. 1, p. 2 and MMB Ex. 2, p. 2).

Contemporary Broadcasting, Inc.

2. Contemporary Broadcasting, Inc. ("CBI"), is the licensee of Station KFMZ(FM), Columbia, Missouri; and the permittee of Station KAAM-FM, Huntsville, Missouri. CBI is the 100% shareholder of CBI. Rice is the President, Treasurer, and a Director of CBI. (MMB Ex. 1, p. 2 and MMB Ex. 2, p. 2).

Lake Broadcasting, Inc.

3. Lake Broadcasting, Inc. ("LBI"), is the licensee of Station KBMX(FM), Eldon, Missouri; the permittee of Station KFXE(FM), Cuba, Missouri; and an applicant for a new FM station on Channel 244A at Bourbon, Missouri (File No. BPH-921112MH). Rice is the President, Director, Treasurer, and 67.5% shareholder of LBI. The remainder of LBI's stock is owned 20% by Dennis J. Klautzer and 12.5% by Kenneth W. Kuenzie. MMB Ex. 1, p.2 and Contemp. Ex. 1, p. 4.

Michael Rice's Convictions

4. Rice was convicted on August 31, 1994, in the Circuit Court of St. Charles County, Missouri, of the following offenses: (i) four counts of sodomy, a Class B felony under the laws of Missouri (§ 566.060 RSMo.); (ii) six counts of deviate sexual assault in the first degree, a Class C felony (§ 566.070 RSMo.); (iii) and two counts of deviate sexual assault in the second degree, a Class D felony (§ 566.080 RSMo.). (MMB Ex. 1, pp. 2-3).

5. The felonies for which Rice was convicted involved the sexual abuse of six juveniles ranging from under 14 to 16 years of age. (MMB Ex. 1, pp 7-11).¹ The felonies occurred over the five year period between 1985 and 1990. On August 31, 1994, Rice was sentenced to eight years in prison for each of the four sodomy counts, seven years in prison for each of the six deviate sexual assault in the first degree counts, and five years in prison for each of the two deviate sexual assault in the second degree counts. Altogether, Rice was sentenced to 84 years in prison. On September 30, 1994, Rice reported to the Sheriff of St. Charles County, Missouri, to begin serving his prison sentence. Rice is presently incarcerated and did not testify in this proceeding. (MMB Ex. 1, p. 3).

6. The licensees submitted four statements attesting to Michael Rice's character. (Contemporary Ex. 5). The LBI and CBI stations have never been fined by the Commission. CMI's stations WBOW and WZZQ have been fined once, in 1989, for logging

¹ The six are identified as CZ, KM, MCF, MM, TF and BRM. (MMB Ex. 1, pp. 38-39 and 44).

violations. (Contemporary Ex. 1, p. 14).

Issues Two and Three

Notification of Michael Rice's Status

7. By letter dated June 14, 1991, LBI informed the Commission that "certain representations in its original assignment application² are no longer accurate, due to the present pre-adjudication 'pendency' of certain criminal matters against a Lake principal." Attached to the letter was a "Statement Pursuant to Section 1.65 of the Commission's Rules." In this "Statement" LBI reported that in August 1990, its President, Michael S. Rice, had been interviewed by local police concerning alleged criminal conduct and that on August 29, 1990 he had been arrested and released on bond, but not formally charged. The statement also disclosed that on November 21, 1990, Rice had been re-arrested. This time formal proceedings were initiated and on March 21, 1991, a Judge had determined that there was probable cause that the crimes had occurred. LBI also informed the Commission that on April 1, 1991, Rice had been formally charged with deviate sexual assault and sodomy involving minors. MMB Ex 1, pp. 36-38

8. LBI further reported in its June 14, 1991 letter that court action was stayed pending a psychiatric examination of Rice and that Rice had been admitted to a mental hospital for examination. LBI stated that;

² LBI became permittee of Station KFXE as a result of an assignment application that the Commission granted on April 11, 1988. (File No. BAP-880112EB). MMB Ex. 1, p. 34.

"[s]ince Mr. Rice's hospitalization on April 3, 1991, he has had absolutely no managerial, policy, or consultative role in the affairs of the three broadcast corporations in which he has ownership interests and officer positions [note deleted]. In other words, pending a resolution of the referenced criminal charges, Mr. Rice is being completely insulated and excluded from any involvement in the managerial, policy, and day-to-day decisions involving any of the four licensed stations and three construction permits held by the three corporations."

Finally, LBI reported that the day-to-day decisions involving the stations and the pending construction permits would be made by Rice's executive assistant, Janet Cox, acting in conjunction with Vice-President and director, Malcolm R. Rice (Michael Rice's father), and the various station's general managers. (MMB Ex. 1, pp. 38-40).

9. By letter dated December 3, 1991, to Stuart B. Bedell, Assistant Chief, Audio Services Division, CBI updated the status of Rice's criminal prosecution. "In addition," CBI reported "Mr. Rice continues to have no managerial, policy, or consultative role in the affairs of KTDI(FM), and Ms. Janet Cox continues to make all policy decisions, if any, pertaining to the unbuilt station." (MMB Ex. 1, pp. 42-44).

10. By letter dated February 26, 1992, to Mary McDonald of the AM Branch, CMI informed the Commission that Janet Cox is a "regular vice-president" of CMI and that there had been no change in Rice's status. (MMB EX. 1, pp. 46 and 47).

11. By letter dated May 14, 1992, CBI transmitted an application for extension of time to construct Station KTDI(FM), Huntsville, Missouri. Attached to the application is a

statement by the licensee concerning representations in the original application that were no longer true. Therein CBI stated, "Mr. Rice is no longer hospitalized, but he continues to be treated by his physicians as an outpatient, and he continues to have no managerial or policy role in the affairs of the three broadcast stations ... in which he has ownership interests and corporate positions...." (Contemp. Ex. 1, Appendix G-2).

12. By letter dated September 30, 1994, addressed to the Acting Secretary of the Commission, CMI, CBI and LBI reported that on August 31, 1994, Rice had been "formally convicted and sentenced to eight years confinement on four counts of sodomy; seven years confinement on six counts of first degree deviate sexual assault; and five years confinement on two counts of second degree deviate sexual assault." The licensees further stated that Rice's incarceration began on September 30, 1994. On the subject of Rice's insulation from corporate affairs the licensees stated;

"Contemporary/Lake previously reported to the Commission that since Mr. Rice's pre-trial hospitalization on April 3, 1991, he has been excluded from involvement in the customary managerial, policy, and day-to-day decisions and operations of [the] licensed stations and construction permits. Instead such decisions have been made and continue to be made primarily by corporate Vice-President Janet Cox and by other experienced professional station employees. Contemporary/Lakes wishes to advise the Commission that this exclusion policy will continue throughout Mr. Rice's period of incarceration."

(MMB Ex. 1, pp. 53-55).

Licensees' Management

13. The Boards of Directors of CMI and CBI consist of three persons. The three directors of CMI and CBI were Michael Rice, Malcolm Rice and Martin Toft. On August

23, 1991, Toft resigned from the CMI and CBI Boards, and Janet Cox was appointed to replace him. The makeup of the Boards has remained unchanged since then. By resolution of the CMI Board dated March 13, 1991, Janet Cox became a Vice President of CMI. By resolution of the CBI Board dated May 8, 1991, Janet Cox became a Vice President of CBI. (Contemporary Ex. 1, pp. 3-5).

14. The Board of Directors of LBI consists of two persons, Michael Rice and Kenneth W. Kuenzie. Rice and Kuenzie have been members of the Board since 1988. By resolution of the Board, in December 1991, Janet Cox was appointed Vice President of LBI.

15. Janet Cox began her employment with the Contemporary stations on August 2, 1982 as a bookkeeper. Her duties expanded to include the hiring and firing of the stations traffic and sales employees, developing the stations' budgets, making presentations on business plans to banks and evaluating the business operations of potential station acquisitions. Since Rice's incarceration, Cox claims that it is she who makes the business decisions for the stations. According to Cox, Malcolm Rice is not involved in the stations' business decisions. Cox's daughter, Mary Woolsey, is general manager of LBI station KBMX and Cox's son, Robert Cox, is sales manager of CMI's Terre Haute stations. Cox's husband's construction company derives revenue from business it does with the stations. (Contemp Ex. 1, pp. 2, 5 and 9; Tr. 224- 230; 592).

16. In 1991, The Boards of Directors of CMI, CBI and LBI each adopted a

corporate resolution that Rice was to have "no managerial, policy or consultative role" in the affairs of each corporation and was to "be completely insulated and excluded from any involvement in the managerial, policy, and daily decisions of the licensed stations and construction permits held by [the] corporations." (Contemporary Ex. 1, Appendices D, E and F).

17. Cox testified that with Rice's exclusion from the stations' affairs in April 1991, she directed the stations' general managers to assume more oversight of their program directors. This was because up until the time of his exclusion, Rice had acted as the in-house programming consultant to the stations' program directors. She claimed that since the early 80's Rice had not been involved in the hiring or firing of the stations' program directors or announcers. Announcers, she testified, are hired by the stations' program directors and the stations' program directors are hired by the stations' general managers. She denied that Rice had ever instructed her to fire an announcer, program director or general manager. Tr. 216-17.

Michael Rice's Involvement in Corporate Activities Subsequent to April 1, 1991

18. On April 3, 1991, two days after he was formally charged, Rice voluntarily entered a hospital for in-patient psychiatric care. He remained in the hospital until October 1991. During the period of his hospitalization there is no evidence that Rice participated in any way in the station's affairs. Contemp. Ex. 1, p. 7 and 10.

19. Subsequent to Rice's hospitalization, Cox visited each of the licensee's stations and held general staff meetings. At these meetings she announced that Rice had been hospitalized and would not be involved in station operations. She did not, however, inform the staffs of the corporate resolution excluding Rice from managerial decisions relating to the stations, nor did she inform the staffs that even after Rice left the hospital he was not to be involved in station operations. Tr. 208-09.

20. A few weeks after he was discharged from the hospital, Rice came to the licensees' headquarters office and informed Cox that his psychiatrist had advised him that it was important to his mental health to resume his business interests and remain active. In response, Cox claims she determined that Rice could assist the stations' engineers on various technical projects that did not involve the stations' management, policy making or day-to-day operations. Before agreeing to permit Rice to perform this work, Cox consulted with the licensees' communications counsel. Cox, however, claims that she made the decision to permit Rice to assist in engineering matters independent of legal considerations. Rice thereafter performed various engineering services on behalf of the station. Any work or travel by Rice, Cox claimed, had to be approved by her. Contemporary Ex. 1, pp.10-11; Tr. 203-05; 224-25.

21. Rather than affirmatively report Rice's involvement in engineering in subsequent communications with the Commission, the licensees simply deleted the claim that Rice had no "consultative role" in the affairs of the stations. (Compare statement in letter dated

December 3, 1991, with letter dated May 14, 1992 (paras. 8 and 11, supra)). The decision to delete the phrase, "consultative role" was made by Cox. She claims that she deleted the phrase in order to more accurately reflect Rice's changed role at the stations. In addition, although the corporations had passed resolutions excluding Rice from, inter alia, any consultative role (see par. 16, supra), no corporate resolution was passed to allow him to perform consultative work for the stations. (Tr. 291-95; 328).

Rice's involvement in Station Management

22. Leon Paul Hanks, who is also known by the air name Chris Kellog, was employed by KFMZ in Columbia as a morning show personality in August 1985. Hanks was promoted to program director of KFMZ in February 1989 and subsequently was given the responsibility of assisting with the programming of the other CMI/CBI stations ("Contemporary stations") as group program director. His primary programming responsibilities were for KFMZ and WZZQ in Terre Haute. Hanks, who suffers from epilepsy, was fired from his employment with the Contemporary stations on August 5, 1994. He was told that he was being fired because he could not come to work every day as a result of his health. Hanks is currently the plaintiff in a lawsuit contending that his discharge for health reasons was improper. Tr. 360-64.

23. Hanks became the group program director in late 1991 or early 1992, shortly

after Rice was released from the hospital.³ As group program director, Hanks was responsible for the programming of KFMZ and assisted the programming director at WZZQ. He also critiqued both stations on air talent and was involved in recruiting talent for WZZQ and LBI. During his stay in the hospital, Rice had listened to WZZQ and believed that the station had strayed from its format focus. When he was released from the hospital, Rice asked Hanks to call the station's "listen line" and then visit the station and go through its music. This was Hanks' first effort working with a program format other than KFMZ's. Tr. 364, 367-68 and 370-71.

24. As group program director, Hanks reported directly to Rice. According to Hanks, his primary job as programming director was to keep the programming format of KFMZ and WZZQ consistent with what Rice wanted. In the beginning, he had frequent, once or twice a week, telephone conversations with Rice. In 1993, when WZZQ was "on track," they spoke less frequently. During their conversations, he and Rice would discuss problems they were having with the program director at Terre Haute and discuss whether the new songs that had been added to the playlist were consistent with the station's format. If Rice heard something on the air he did not like, he would call Hanks and ask him to take care of it. Tr. 371-73

25. Subsequent to April 1991, Rice would regularly check KFMZ's and WZZQ's

³ There was no specific date on which Hanks became group program director. A press release announcing his title was issued in November 1992. Tr. 369-70.

new song reports in the trade publication R&R (Radio and Records). On several occasions Rice called Hanks to complain that the stations were adding too many new songs.

According to Hanks, it was Rice's philosophy that if a station played too many new songs, then it was not playing enough of the old classics. One time, when the stations had introduced ten new songs in one week, Rice called Hanks and wanted to know why.

According to Hanks, neither Cox nor Malcolm Rice ever reviewed the stations' playlists. Tr 376-77.

26. John Rhea was employed as the general manager of CMI Stations WZZQ and WBOW from December 30, 1991 to December 16, 1992. He was hired by Janet Cox. Rhea has worked in broadcasting since 1964. He has held numerous positions in broadcasting including several management positions. At WZZQ and WBOW, his duties were to run the sales department and oversee the general operation of the radio stations. His duties did not include oversight of the programming of the stations which was the responsibility of Contemporary's group program director, Hanks, who was located in Columbia. Tr. 360; 475-480.

27. Rhea was hired before Christmas and began his employment on December 30, 1991. Rhea testified that at the time he was hired, Cox told him that the stations were owned by Rice. Rice, she said, had been ill and she had taken over as chief operating officer of the company. She did not, however, tell him the nature of Rice's illness or any of the facts surrounding Rice's situation. It was not until six weeks after he was on the job that

a salesman came into Rhea's office and told him that Rice had been indicted for child molestation. After hiring Rhea, Cox requested that he attend the office Christmas party. At the Christmas party, Rhea met Rice for the first time. Rice congratulated him on being hired and appeared to know about his background. Tr. 480-82; 499.

28. Cox recalled, however, that she had told Rhea about Rice's criminal indictment at the time she hired him. According to Cox, Rhea continued to pursue the position despite this information. Tr. 576.

29. According to Rhea, about a month and a half after the Christmas party, Rice all of a sudden "popped in" on him and took him to lunch. After talking about broadcasting in general, Rice let Rhea know that he was not happy with WBOW's musical sound. About a month later Rice visited the station and again took Rhea to lunch. Between these two luncheons, WZZQ had lost its program director. At this second lunch, Rice told Rhea that he knew an announcer, Mike Steel, who he thought they might be able to get for the WZZQ program director position. Tr. 482-83 and 486.

30. Rice also discussed hiring Steel with Hanks. Rice told Hanks that he had heard Steel on a radio station in Warranton, Missouri, and wanted to hire him. Rice said he had gotten in touch with Steel and the two had met and discussed programming philosophy. Rice had liked the fact that Steel had a top 40 background. Rice told Hanks that he had asked Steel to come to work in Terre Haute as program director. Cox, he said, would take care of

the hiring. Tr. 405-06

31. Subsequent to his second lunch with Rice, Rhea received a call from Cox telling him to find a hotel room for Mike Steel who was coming to work for the station. Steel was employed by WZZQ for approximately 2-3 months. During his time with the station, he changed the station's reporting status from AOR (Album Oriented Rock) to top 40 in the music trade publication, R&R. Rice was furious that this change had been made. In a telephone conversation, Hanks testified, Rice told him that he wanted Steel gone immediately. After the change in reporting status was made, Rhea was instructed by Rice and Cox to fire Steel. Cox told him that Rice had gone "ballistic" over the reporting status change. She overnighted Steel's termination papers to Rhea and told him, "[t]ake care of it." Tr. 405-7; 484-85; 511-12.

32. According to Cox, it was she who had heard Steel on the air working for a competitor and had liked him. After discussing Steel with Rice, she claimed she made the decision to hire Steel. Tr. 263-64. Cox denied that she had instructed Rhea to fire Steel. She claimed that it was Rhea who made the decision. Tr. 568-69.

33. At Rhea's second luncheon meeting with Rice they also discussed WBOW's program director, Chip Ramsey. Rice told Rhea that Ramsey had worked for him before and he did not like him then and did not like him now. Rhea concluded from this that Ramsey's job was on the line. Around the end of April, at the conclusion of the baseball

season, Rhea received instructions from Cox to fire Chip Ramsey. Ramsey could not be fired earlier because of a contract the station had with Indiana State University which called for Ramsey to announce their baseball games. Rhea testified that he knew Ramsey was going to be fired because he knew how Rice felt about Ramsey. Rhea fired Ramsey as he was instructed to do. Tr. 483-84; 486-87; 510-11.

34. According to Cox, Rice never directed her to fire Ramsey. Ramsey was fired by Rhea at her direction because Ramsey was not happy about some changes in WBOW's format and his unhappiness was reflected in his work. Tr. 573.

35. Rhea hired an announcer by the name of Steve Holler. Holler was the son of the station's office manager, Margaret Holler. Steve had been living in Florida and wanted to return to Indiana. Rhea decided to employ him as an announcer despite his lack of experience. Rhea spoke with Cox about hiring Steve and determined there would not be a problem doing so. At the time, Rice was working on a new transmitter for WBOW and heard Steve's first radio broadcast. Rice called Rhea and told him, "I want him off the radio. He isn't worth a damn. Get him off the radio." Rhea testified that he was upset with Rice because it was Steve's first day on the job and, Rhea felt, he had not been given a chance. Later that day Cox called Rhea and told him to get rid of Steve Holler. Cox then sent the paper work and Rhea fired Holler. There was no doubt in Rhea's mind that Rice had called Cox and that Rice was behind Steve's firing. Tr. 487-90.

36. According to Cox, Rhea did not want to hire Holler because his mother worked for the station but did not have the "guts not to hire him...." Ultimately Rhea fired Holler. She claimed that she did not know whether Rice had instructed Rhea to fire Holler. Rhea may have told her that was the case, but Rhea had told her numerous things that were not true. Tr. 248-49.

37. Rhea had hired Mike Bianchi, whose air name was Mark Savage, for the position of program director of WZZQ. Rhea considered Savage to be an excellent employee. At first, Rhea testified, Rice was happy with Savage's performance. Savage, however, had a conflict with Hanks and Rice then told Rhea that he was no longer happy with Savage. Tr. 490-93.

38. In late October or early November 1992, Hanks drove Rice and Cox to Terre Haute from the St. Peters, Missouri, office for the express purpose of firing Mark Savage. According to Hanks, Savage was not doing well in maintaining the station's format. Every time he, Hanks, would adjust WZZQ's format, Savage would veer it back off focus. Rice would call Hanks and complain that when he listened to the station a month after they had visited the station, it did not sound the same. Finally, Rice told Hanks that he had decided that it was time to get rid of Savage. When Rice told him this, Hanks asked if he should start looking around for a replacement. Rice replied that he should and that he (Rice) would start looking around too. Tr. 378-382

39. When they reached Terre Haute, Rice, Cox and Hanks went to Rhea's office. In Rhea's office, Rice instructed Rhea and Cox that they were to fire Savage. According to Hanks, he and Rice stayed in Rhea's office with Rhea and talked while Cox went downstairs to the Savage's office and fired him.⁴ During their conversation, Rice told Hanks, referring to the firing of Savage, that he was "not supposed to do this kind of stuff," so he had Cox do it. Tr. 378; 382; 386. After Savage was fired, Rhea told Rice that he was not happy about firing Savage. Rice replied that firing Savage should give him a sense of power. Tr. 490-94.

40. According to Cox, she went to Terre Haute just before Thanksgiving and discussed firing Savage with Rhea. She recalled that it was Rhea's idea to fire him. She claimed to have no recollection of Hanks driving her to Terre Haute. Savage was fired, she testified, because he was having problems following the station's format and because he had personal problems which kept him from doing the job. Tr. 239; 571.

41. After the firing of Savage, Hanks drove Rice and Cox back to St. Peters. Rice sat in the front seat next to Hanks. While he was driving, Hanks testified that he overheard Rice tell Cox that he was not pleased with Rhea's failure to motivate the sales staff. Rice told Cox, "your guy has got to go." Hanks understood that by "your guy" Rice was

⁴ The testimony of Hanks and Rhea is in conflict as to whether Rhea went with Cox to fire Savage or remained in his office with Hanks and Rice. This conflict, however, is inconsequential. What is important is Rice's roll in the firing, not who performed the ministerial act of informing Savage that he had been fired.

referring to the fact that Cox had recruited and hired Rhea. Hanks felt uncomfortable listening to this conversation between the CEO (Cox) and the owner (Rice), but was in a position where he could not help but hear what was being said. Hanks believes Rice noticed his discomfort because he told him that he and Cox had these little meetings all the time. Tr. 386-88.

42. Subsequently, on December 16, 1992, Rice and Cox returned to Terre Haute, entered Rhea's office and sat down. Rhea asked them "Who are we taking out today?" Rice replied, "You." Rhea then asked why he was being fired and Rice replied, "Change in direction." After Rice left the room, Rhea asked Cox why he was being let go. Rhea testified that Cox told him it was because Rice was displeased with WBOW's financial performance. Tr. 478; 495-97.

43. According to Cox, it was her decision to fire Rhea. She decided to fire Rhea because the stations were not achieving revenue goals and because of personnel problems. She testified that she went to Terre Haute with Rice. Cox claimed that the reason Rice went with her was to be a witness to Rhea's firing. Tr. 234-238

44. During the time that Rhea worked as general manager of CMI stations WZZQ, WZZQ(FM) and WBOW, Rhea assumed that because Rice owned the stations he was the boss. While he was general manager he was never told that Rice was to be insulated from station management. He first learned that Rice was to have been insulated from station

management when he was so informed by Bureau counsel about a month and a half before testifying in this proceeding. Tr. 502.

45. According to Hanks, in May or June 1992, Rice directed Hanks to replace a female announcer, Janice Pratt, who Rice thought "screechs or squawks" on the air. There was no question in Hanks' mind, that he had to let her go. He began to look for a replacement and started talking to the station's Saturday night announcer, Bob Kinneson, about his taking over Pratt's position. Before Hanks could make the offer, Rice called and instructed him to get rid of Kinneson. Hanks did not fire Kinneson because Kinneson resigned to work for another station. Hanks still had to replace Pratt, but he did not feel he could tell her she was being fired because she screeched on the air. Eventually he fired her for repeatedly coming to work late. After he let her go, Rice told Hanks that he should have fired her a long time ago. If the decision were Hanks to make, he would not have let Pratt go. Tr. 398-403.

46. Rice told Hanks on a number of occasions that he was not happy with KFMZ announcer Sean Madden. Hanks testified that it was not so much his on air performance that Rice did not like as it was his aloof attitude. At the company's 1992 Christmas party, Rice informed Hanks that he wanted Madden fired. Madden, however, was the boyfriend of another announcer, Sally Chase, and Hanks was concerned that if he fired Madden, Chase, who he wanted to keep, would resign. He called Cox for her advice. She advised him to start looking for replacements for both of them. According to Hanks, before he could fire

Madden, Madden quit to take a job in Detroit. Tr. 408-12.

47. Rice also instructed Hanks to get a replacement for Jeff Presley who worked evenings at KFMZ. Hanks testified that Rice thought that Presley was too old for the night time position. Presley was an old friend of Hanks and Hanks did not want to fire him. Hanks met with Presley and told him that Rice did not want him on the air at night any longer. He told Presley that he had no other position for him and that he would have to let him go. They agreed on a date by which Presley would leave and Presley started looking for a new job. Tr. 412-13.

48. Ben Jacobs started at KFMZ working at nights and then, in November 1992, was moved by Hanks to WZZQ as program director. Hanks recalled that, during a flight to Chicago on company business, Jacobs asked Rice about moving some staff members around. Rice agreed that it sounded like a good idea. When Jacobs returned to WZZQ he made the changes. When Rice learned that the changes had been made he felt betrayed by Jacobs who had acted on what Rice considered to be casual conversation. Rice told Hanks that he "takes that kind of thing personally." After that, Hanks testified, Rice would not give Jacobs a break on any mistake that he made. Rice told Hanks "your boy has got to go." Hanks did not fire Jacobs, but Jacobs was fired shortly thereafter. Tr. 413-17.

49. When Rice instructed Hanks to make a change in a station's programming format, Hanks testified that he felt compelled to obey those instructions. As far as Hanks

was concerned, Rice was his boss. In his mind, "Mike was the owner of the station, and there was no doubt that whatever he said is what went final, period, that's it, it's done." Tr. 417-18.

Rice's Involvement in Station Finances

50. Subsequent to April 3, 1991, through the time of his incarceration, Rice was authorized to sign corporate checks on behalf of CMI, CBI and LBI. In the case of CMI and CBI, Janet Cox and Malcolm Rice were also authorized to sign corporate checks. In the case of LBI, Janet Cox and Dennis Klautzer (20% shareholder of LBI) were also authorized to sign corporate checks. Up until 1994, two signatures were necessary to negotiate a CMI or CBI corporate check. In 1994, just before Rice went to prison, this was changed to one signature because it was difficult to get two signatures on a check and because of a concern that if something happened to Malcolm Rice or Janet Cox, there would be no one who could draw money out of the bank. In this regard, if necessary, an attorney could take the checkbook to Rice in prison and have him sign the checks. LBI checks always required only one signatory. Rice signed two types of checks, payroll and accounts payable. To Cox's knowledge, after April of 1991, Rice never issued a check that was not authorized by her. A random selection of approximately 500 checks issued by the corporations reveals that approximately 6% of the checks issued for the period from April 3, 1991, to the date of Rice's incarceration (September 1994), bore Rice's signature. These checks were for payroll or accounts payable. Cox would have Rice sign a check based on his availability at the station. MMB Exs. 3, 4, 5 and 10. Tr. 301-08.

Other Indicia of Rice's Control

51. By letters dated in 1993 and 1994, well after the 1991 date of his alleged exclusion from station management, Rice wrote three letters in which he made managerial decisions concerning the sale of his existing stations and the acquisition of others. By letter dated April 29, 1993, Rice, apparently following up on a call to Cox, informed another broadcaster that "we do not want to sell the bare CP. for the Huntsville, MO. station." The letter concludes, "If you have any further thoughts or ideas, please let me or Janet know." In a letter also written on April 29, 1993, to another broadcaster, Rice states, "Following up on your telephone call to me this week, we do not want to sell the CP. for the Huntsville, MO. station." Rice also states that he had suggested a swap of broadcast interests. Again he concludes, "If you have any further thoughts or ideas, please let me know." In another letter to a broadcaster, this one dated August 3, 1994, Rice states his willingness to discuss a swap of KAAM for two other stations. All three letters are written on the letterhead of Contemporary Media Broadcasting Group. MMB Ex. 1, pp 24, 26, 30.

52. At one point, Rice directed Rhea to contact Satellite Music Network, a programming supplier located in Dallas, to arrange programming for WBOW. Rhea had Satellite Music Network send him a contract, a copy of which he sent to Cox. Subsequently, he received a call from Cox informing him that they were not going to enter into the contract. According to Rhea, the reason she gave him for not entering into the contract was that Mike Rice believed the cost was too high and that he, Rice, could do the job cheaper himself. Tr. 502-03; 525-26.

Rice's Role Post Incarceration

53. After Rice went to prison in September 1994, Cox received communications from him in the form of telephone calls and written notes. At first she heard very little from him. Later, when his father's health deteriorated, she heard from him more frequently. Cox currently receives letters from Rice about twice a month. Generally they are about personal matters. When they talk, Cox keeps Rice informed of station matters such as the hiring of new personnel, advertising and the purchasing of new equipment. Tr. 308-09.

54. In a letter dated November 13, 1995, Rice gave Cox detailed instructions regarding station operations. For example, he instructed Cox to, inter alia, "have a stern talk with Ken and Dennis." They, he said, should "stay away from KBMX and let the manager manage." He further states that input from Dennis should be through Cox and Dan Letterman. Letterman at the time was general manager of KBMX(FM), Eldon, Missouri. Ken and Dennis are his two partners in LBI. Cox had a talk with "Ken and Dennis," but claims she never told them to stay away from KBMX. MMB Ex. 9; Contemp Ex. 3, p. 1, Tr. 133-4, 310.

55. In his November 13th letter, Rice also recommends that employee morale be maintained by buying new equipment and stresses the need to be positive in running the stations. He also instructs Cox to make sure that other employees do the bookkeeping so that she can remain free to manage the corporations. Cox claimed that she did not understand the matters addressed by Rice to be directions she had to follow. According to

Cox, she considered Rice's letter writing as something he does to fill idle time. She considers some of his writing to be "off the wall." Tr. 309-14; MMB Ex. 9.

56. Subsequent to Rice's incarceration in April 1994, Cox hired an outside consultant, Dave Lange, to assist in programming the stations. Cox testified that she hired Lange because "I'm not a programmer." Cox began using Lange's services in mid-1994. Cox denied that she hired Lange because of the unavailability of Rice following Rice's incarceration. Tr. 219-20.

Conclusions of Law

Issue One

1. In the 1986 Character Policy Statement, 102 FCC 2d 1179, 1195-97, the Commission stated that in assessing the character qualifications of a licensee it would consider two categories of misconduct: FCC related and non-FCC related. With respect to non-FCC related misconduct the Commission stated it was concerned with adjudicated misconduct which reflected on the applicant's or licensee's proclivity to deal truthfully with the Commission. In addition, the Commission stated that it would consider non-FCC misconduct as prima facie evidence that an applicant lacked the traits of reliability and/or truthfulness necessary to be a licensee if the misconduct was "so egregious as to shock the conscience and evoke almost universal disapprobation." 102 FCC 2d at 1205 n. 60. In 1990 the Commission expanded the 1986 Character Policy Statement to provide that any felony conviction, not just those involving fraud or untruthfulness, is relevant to the consideration of